

In the matter of )  
 )  
Silver Palm Communications, Inc. ) File No. 0000233574

<sup>6</sup> *See id.* at 2.

4. Silver Palm further asserts that the public interest will be served by grant of a waiver of the long-form application deadline because such a waiver will permit Silver Palm to use the licenses to “expedite competitive wireless communications services to rural areas in the United States.”<sup>7</sup> Silver Palm specifically highlights the fact that it acquired licenses for Guam and the Northern Marianas Islands, rural areas that lack competitive wireless telecommunications service.<sup>8</sup>

5. Silver Palm argues, finally, that the Commission has previously granted waiver of the long-form application deadline to Pinpoint Communications, Inc. in the LMDS Auction where a winning bidder submitted its long-form application six days after the filing deadline.<sup>9</sup> In *Pinpoint*, Silver Palm asserts, the Public Safety and Private Wireless Division granted a waiver because it found that the public interest would not have been served through a strict application of the Commission’s long-form filing deadline and rules. Likewise, Silver Palm contends that strict application of the filing deadline under its circumstances would be contrary to the public interest.

6. A request for waiver of the subject rule must affirmatively show that either: (a) the underlying purpose of the rule would not be served in a particular case and that grant of the waiver is otherwise in the public interest; or (b) the “unique facts and circumstances of a particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest.”<sup>10</sup> One of the primary purposes underlying the post-auction application filing deadlines is to ensure that a bidder meets the Commission’s qualification and eligibility requirements in order to “avoid delays in the deployment of new services to the public that would result from litigation, disqualification, and re-auction.”<sup>11</sup>

7. We believe that Silver Palm has presented sufficient facts that, when considered in their totality, demonstrate unique circumstances that meet the standard for waiver of the subject rules. The record indicates that prior to the late filing of its long-form application, Silver Palm had complied with all previous 800 SMR filing requirements.<sup>12</sup> Additionally, Silver Palm had, by virtue of its large upfront payment, timely submitted its required down payment.

8. Under the circumstances presented by Silver Palm, we conclude that the public interest would not be served by dismissal of this application, which would result in the denial of two 800 SMR licenses to Silver Palm that it had planned to use for rapid deployment of service to areas that lack competitive wireless service. In reaching this conclusion, we also give considerable weight to Silver Palm’s prior record of compliance in the 800 SMR Auction. We further recognize that, because Silver Palm timely met its down payment requirements, and submitted its long-form application soon after the filing deadline, the post-auction licensing process for the 800 SMR Auction was not significantly delayed or materially adversely affected. Thus, we believe some flexibility is appropriate in this instance. Accordingly, we will hereby grant Silver Palm’s waiver request and accept its application for processing. This decision comports with Bureau precedent wherein spectrum auction applicants were granted partial

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* See In the Matter of Application of Pinpoint Communications, Inc., *Order*, 14 FCC Rcd 6421 (PSPWD 1999) (*Pinpoint*).

<sup>10</sup> 47 C.F.R. §1.925(b)(3).

<sup>11</sup> See Implementation of Section 309(j) of the Communications Act – Competitive Bidding, Second Report and Order, PP Docket No. 93-252, 9 FCC Rcd 2348, 2382 (1994).

<sup>12</sup> See Public Notice, “Auction of Licenses for 800 MHz Specializes Mobile Radio (SMR) Service in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz), 26 Qualified Bidders,” DA 00-1788 (rel. Aug. 7, 2000).

relief for minor, inadvertent post-auction delinquencies that did not disrupt the auction process or undermine the Commission's policy of facilitating rapid implementation of reliable communications service to the public.<sup>13</sup>

9. Although we grant Silver Palm a waiver of the rules requiring dismissal of a late-filed long-form application and associated imposition of default payment obligations, we nonetheless note that Silver Palm failed to comply with the Commission's rules when it filed its long-form application fourteen days late. Silver Palm admits that its late filing was the result of its own error. Silver Palm was on notice that it was responsible for complying with the Commission's processing rules and that it would be subject to default payments if it failed to timely file its Form 601.<sup>14</sup> Silver Palm's failure to timely submit its Form 601 imposed an additional administrative burden on the Division. The timely filing of long-form applications is important to the efficiency of the competitive bidding licensing process. Consequently, the fact that Silver Palm's error appears inadvertent does not excuse its failure to meet the long-form application filing deadline. Accordingly, we will refer this matter to the Commission's Enforcement Bureau.

11. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 5(c)(1) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c)(1), and section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, the waiver request filed by Silver Palm on October 4, 2000 is HEREBY GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

Linda C. Ray  
Deputy Chief, Policy and Rules Branch  
Commercial Wireless Division  
Wireless Telecommunications Bureau

<sup>13</sup> See, e.g., In re Application of PCS Partners, L.P., *Order*, 16 FCC Rcd at 4738 (CWD 2001); *Pinpoint*, 14 FCC Rcd at 6421.

<sup>14</sup> See *Closing PN*, DA 00-2037; Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service in the General Category Band (851-854 MHz) and Upper Band (861-865 MHz), Auction Notice and Filing Requirements for 1,053 Licenses in the 800 SMR Service For the General Category Auction, Auction Rescheduled from August 23, 2000 to August 16, 2000, *Public Notice*, 15 FCC Rcd 8868 (2000).